IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4319 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HABIBALI ADAMJI AJMERI - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

NANAVATY ADVOCATES for Petitioner(s) : 1,
MS ML SHAH, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 28/02/2006

ORAL JUDGMENT

1.In the present petition, the petitioner has prayed for payment of Subsistence Allowance from January 1986 onwards.

2. Short facts leading to the present petition are that the petitioner was placed under suspension with effect from 03-12-1983. Since his Subsistence Allowance was not being paid regularly, petitioner filed Special Civil Application No.2064/1985. The said petition came to be disposed of by judgement dated 07-01-1986. The representation of the petitioner was directed to be considered sympathetically. It appears that the petitioner was thereafter, paid Subsistence Allowance for the earlier period ending with January, 1986. Thereafter, from January, 1986 onwards, the petitioner was not paid Subsistence Allowance. He therefore, filed the present petition and claimed the said benefits as mentioned above.

3. In response to the notice issued by this Court, respondents have appeared and filed reply. In the affidavit in reply dated 12-09-1996, it is stated inter-alia that the petitioner did not report at the headquarters as per the orders of the authorities. It is stated that headquarters of the petitioner was changed by order dated 20-01-1986. It is stated that despite the change of headquarters, the petitioner did not report at the said place nor did the petitioner

remain present at his earlier headquarters i.e. Timbarwa(Gir). It is stated that order dated 20-01-1986 was sent to the petitioner by RPAD. It is further contended that since the petitioner did not report at either of the two places, he has breached the condition of the order of transfer as well as condition contained in Sub-rule(1) of Rule 151 of Bombay Civil Services Rules. This according to the respondents would dis-entitle the petitioner from claiming Subsistence Allowance.

4. The petitioner has filed rejoinder and joined issues. He has stated that he was never conveyed the communication dated 20-01-1986. He therefore, had no reason to report at the new headquarters.

5. The petitioner apparently took no steps for seeking his Subsistence Allowance right from year 1986 to 1996 when he filed the present petition. If the petitioner had been reporting at the earlier place oblivion of the order by which his headquarters was changed, the petitioner would have surely moved the authority or this Court timely, seeking Subsistence Allowance. The petitioner kept silent for a period of 10 years and

made no grievance about nonpayment of Subsistence Allowance. This would establish the veracity of the stand of the respondents in contending that the petitioner reported at neither of the two places i.e at the earlier place at Timbarwa(Gir) or at his new headquarters. Thus, the petition was clearly in breach of the condition of the order of transfer as well as relevant service rules. He therefore, cannot claim Subsistence Allowance.

6.The petition is therefore, rejected. Rule is discharged with no order as to costs.

(Akil Kureshi,J.)

(raghu)